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IN THE COURT OF APPEALS OF INDIANA

JAMES D. BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-0611-CR-639
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Marcia Linsky, Magistrate
Cause No. 02D04-0510-CM-7941

NOVEMBER 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant James D. Brown ("Brown") appeals from his conviction after a jury trial of operating a motor vehicle while intoxicated, a Class C misdemeanor.

We affirm.

ISSUE

The sole issue presented for our review is whether the State's evidence of Brown's intoxication was sufficient to support Brown's conviction of operating a vehicle while intoxicated.

FACTS

Fort Wayne Police Officer Jerry Mericle clocked the car that Brown was driving at 60 miles per hour in a 40 mile per hour speed zone. Mericle stopped the vehicle. After the passenger, who was the owner of the vehicle, protested loudly, Officer Mericle asked Brown to exit the vehicle in order to exchange information. Officer Mericle detected the odor of alcohol coming from the vehicle, and a moderate odor of alcohol coming from Brown after Brown had exited the vehicle. Officer Bradtmueller, who was working on a special OWI patrol, arrived on the scene to assist Officer Mericle. Officer Bradtmueller had Brown perform three field sobriety tests. Brown failed all three tests. Brown was taken to a hospital for a blood alcohol test, which he refused. The doctor was amused by Brown's excuse for refusing the blood alcohol test. Brown stated that he had undergone a medical procedure earlier in the day, and suspected that the red dye injected into him for that procedure contained alcohol. Brown feared that the alcohol would show up in his blood test.

DISCUSSION AND DECISION

As applicable to this appeal, Ind. Code §9-30-5-2 provides that a person who operates a vehicle while intoxicated commits a Class C misdemeanor. A person is "intoxicated," as defined by Ind.Code § 9-13-2-86, if that person is "under the influence of alcohol so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Brown's argument is that the State failed to present sufficient evidence of his intoxication.

When reviewing a claim of insufficient evidence, we will not reweigh the evidence or judge witnesses' credibility. *Ware v. State*, 859 N.E.2d 708, 724 (Ind. Ct. App. 2007). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. *Id.* We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. *Id.* When a defendant is convicted on circumstantial evidence, we will not reverse if the trier of fact could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt. *Id.* To affirm, we need not find the circumstantial evidence overcomes every reasonable hypothesis of innocence. *Id.* Instead, we must be able to say that an inference may reasonably be drawn from the circumstantial evidence to support the verdict. *Id.*

The jurors are the triers of fact, and in performing this function, they may attach whatever weight and credibility to the evidence they believe is warranted. *Parks v. State*, 734 N.E.2d 694, 700 (Ind. Ct. App. 2000). The jury is free to believe portions of a witness' testimony and disregard other portions of the testimony. *Id.*

The two police officers' testimonies established that Brown's eyes were watery, he had the odor of alcohol on his breath, his balance was unsteady, and he failed three field sobriety tests, all of which are signs of intoxication. *See Ballinger v. State*, 717 N.E.2d 939, 943 (Ind. Ct. App. 1999). Additionally, the jury heard that Brown refused a blood alcohol test, which can be considered a sign of impairment. *See Beasley v. State*, 823 N.E.2d 759, 763 (Ind. Ct. App. 2005). There was further police testimony that Brown was swaying, had a pale face, and had dilated pupils, all of which could be considered by the jury as indicators of intoxication.

We are of the opinion that the evidence is sufficient to prove intoxication.

CONCLUSION

The evidence is sufficient to support the verdict. Judgment affirmed.

KIRSCH, J., and VAIDIK, J., concur.